

APPENDIX G

BUREAU OF RECLAMATION WITHDRAWAL REVIEW

LETTER OF AGREEMENT
CONCERNING WITHDRAWAL REVIEW
ON BLM'S JUDITH-VALLEY-PHILLIPS
RESOURCE MANAGEMENT PLAN AREA
and
RECLAMATION'S MILK RIVER PROJECT
(VALLEY AND PHILLIPS COUNTIES)

BLM, as part of its responsibilities under the FLPMA, will allocate resource uses on public lands through the JVP RMP, including reviewing withdrawals of public land made by other agencies for various public purposes. Reclamation has made withdrawals of public lands for their ongoing Milk River Project, and has a current planning effort for a rehabilitation and betterment program.

The two agencies agree to cooperatively process the withdrawal review and plan for wetlands management in the following manner:

Reclamation will:

based on the attached criteria/procedures, provide BLM rejustification statements for the areas they wish to continue, modify or revoke.

review BLM's application of the withdrawal review process and provide a written statement of concurrence or disagreement for publication in the BLM's RMP.

include BLM Lewistown District as a member of the planning group responsible for establishing wildlife mitigation measures concerning the Milk River R&B program.

BLM will :

include Reclamation in all stages of the development of the JVP RMP.

review Reclamation's rejustification statements according to the attached criteria/procedures and as part of the land use planning process and prepare the necessary documentation for further action.

make a final opinion on the withdrawal review as part of the final JVP RMP.

Both agencies will:

conduct frequent coordination meetings to encourage clear communication of the withdrawal review process and to promote the Department of Interior's initiative for the North American Waterfowl Plan.

jointly pursue mechanisms to implement the Prairie Potholes Joint Venture of the American Waterfowl Plan.

resolve any disputes which occur during the application of the withdrawal review process through the procedures of the standing MOU between the Montana BLM and Great Plains Region of Reclamation before the Record of Decision on the JVP RMP is finalized.

Bureau of Reclamation lands, areas or withdrawals were justified for continuation, modification or revocation by using the following criteria.

CRITERION A

Lands Within a Reservoir Boundary. The specific lands must be determined on a reservoir-by-reservoir basis, however, they are generally described as:

1. All lands which are inundated when the reservoir is at maximum water elevation and an additional 300-foot horizontally landward from the water/land boundary. Withdrawals for reservoirs will normally be described and delineated using the Public Land Rectangular Survey system of townships, ranges, sections and aliquot parts, to the nearest 40 acre aliquot part or lot.
2. All lands required for constructed facilities with a significant capital investment value or possessing a potential safety hazard, including, but not limited to dams, spillways, power plants, penstocks and electrical substations.

Segregation: From settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: The remaining estimated life of the project.

Jurisdiction: Reclamation

PROCEDURES FOR IMPLEMENTING CRITERION A

1. Reclamation will reference maximum water elevation.
2. Reclamation will draw a line parallel to maximum elevation at distance of 300 ft. and any 40-acre parcel or lot that the line touches will continue as withdrawn.
3. Dams will require 1/4 mile to control blasting and other items related to dam safety. The 40 acre "parcel rule" will decide which aliquot parts will be continued as withdrawn. Similar justifications for other kinds of facilities will occur.

CRITERION B

Lands Needed for Recreation Development and/or Wildlife Mitigation/Enhancement. These are lands which are included as project requirements in the authorization or appropriation legislation, or have been established through historical use, whether or not within a reservoir boundary. (Congress has made these an integral part of the project and part of the primary purpose of the withdrawal.)

Segregation: From settlement, sale, location, or entry under the general lands laws, including the United State mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: The remaining estimated life of the project.

Jurisdiction: Reclamation

PROCEDURES FOR IMPLEMENTING CRITERION B

1. There are no recreation or wildlife mitigation functions authorized by Congress for the Milk River project. The Bureau of Reclamation will make no justifications on this basis.

CRITERION C

Watershed Areas. Those watershed areas immediately above water resource developments where there is a reasonable concern that nondiscretionary mineral entry may cause damage to facilities or degradation of water quality, especially where the water resource is to be used by municipal and industrial users. Generally, large watershed areas will not be recommended for withdrawal. The need for a withdrawal must be assessed on a case-by-case basis.

Segregation: From location or entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: The remaining estimated life of the project.

Jurisdiction: The BLM, U.S. Forest Service (FS) or other appropriate land managing agency. Before activities are authorized in these areas, Reclamation shall be advised.

PROCEDURES FOR IMPLEMENTING CRITERION C

1. No known issues exist in this area. Nationwide, this is a more critical issue in the southwest where major mining activities could indirectly affect potable water supplies for municipalities through flooding. If a situation is discovered that meets Criterion C the BLM and Reclamation will meet and come to agreement about the justification language.

CRITERION D

Water Recharge Areas. Lands where there is a "constructed" and operating groundwater recharge "facility." The need for a withdrawal must be assessed on a case-by-case basis.

The term "construction" includes actions to improve the surface recharge rate, i.e., dikes and facilities such as injection wells. The withdrawal is to protect an area where an irrigation district or Reclamation is spreading, injecting, or by other means banking excess water in an aquifer for future mining during drought years.

Segregation: As appropriate to provide the needed level of protection to the recharge project, up to and including segregation from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: Twenty years or lease, as appropriate to the recharge plan.

Jurisdiction: Reclamation, but may be the BLM depending on the level of control needed by Reclamation.

PROCEDURES FOR IMPLEMENTING CRITERION D

1. This is not an issue in this area. Reclamation will not make justifications on this basis.

CRITERION E

Lands Needed for Flood Control Structures and Impoundment Areas. Related material sites may be recommended for withdrawal based on a need for guaranteed availability of emergency access to mineral materials.

This includes, but is not limited to, areas where storm water retention, diversion and flow is contained and/or directed away from major canals, power substations, or other such features. Also included may be the floodway or floodplain lands lying below a Reclamation dam which may be inundated by release of excess flows before or during storm surges reaching the Reclamation reservoir.

Segregation: From settlement, sale, location, or entry under the general lands laws, including the United States, mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: Usually, the remaining estimated life of the facility being protected.
Jurisdiction: Reclamation, although other arrangement may be appropriate.

PROCEDURES FOR IMPLEMENTING CRITERION E

1. This criterion will address material sites. Material sites will generally be no larger than 40 acres. Smaller acreage may be adequate. Reclamation will make justifications on an individual basis.

CRITERION F

Water Quality Facilities. These facilities include salinity control facilities and sludge disposal areas.

Segregation: From settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: Not more than a 20-year term will be used.

Jurisdiction: Reclamation

PROCEDURES FOR IMPLEMENTING CRITERION F

1. This is not an issue in this area. Reclamation will make no justifications on this basis.

CRITERION G

Lands Needed for Named Main Delivery Canals. These canals must have been constructed with federal funds and used to transport water to reservoirs or from the dam site to the feeder canals. All other canals will be authorized by a right-of-way.

The width of the withdrawn area will be limited to the flowage way and sufficient area on both sides to accommodate operations and maintenance activities, generally a width of 100 to 300 feet. Adjacent material sites, seepage hazard areas, and certain facilities areas may require a site specific increase in the width of the withdrawal.

Segregation: From settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws.

Term: Normally, the estimated life of the project served by the canal.

Jurisdiction: Reclamation

PROCEDURES FOR IMPLEMENTING CRITERION G

1. Canals that are shown on project maps and described in the overall project plan will be justified by Reclamation.
2. Some feeder canals are shown on project maps and will be considered named main delivery canals and justified by Reclamation. An example is the canal that supplies Nelson Reservoir.
3. Feeder canals as described in the draft interagency agreement are normally called laterals by Reclamation in this area and are numbered rather than named. This type of canal will not be justified by Reclamation.
4. Any site specific exceptions for seepage, etc. will have a separate justification discussion.
5. Acreage for continuation for withdrawal will require some judgement. Aliquot parts will make for easier acreage descriptions. Therefore Reclamation will generally base their justification for continuance on nearest 10 acre parcel. However, if very small isolated parcels of public land would be created (less than 40 acres)

Reclamation will justify continuance of withdrawal for 40 acres.

- a. Project surveys were on stationing and not tied into section lines. Therefore, if aliquot part descriptions are not used, we must determine how withdrawals would be displayed on Master Title Plats.

CRITERION H

Activity Planning Areas. These are lands on which planning is completed or ongoing for the above items A through G activities and Reclamation is or will be pursuing legislative authorizations, or there is the likely probability that a non-Federal entity will develop the project within the next 20 years.

Segregation: The lands will be segregated only to the extent to protect the planned activity.

Term: Withdrawals for this purpose shall be for 10 years, or less, as appropriate.

Jurisdiction: Normally Reclamation, however, BLM may retain jurisdiction where Reclamation finds it compatible with their plans.

PROCEDURES FOR IMPLEMENTATION CRITERION H

1. Both agencies will study the Rehabilitation and Betterment (R & B) reports looking at the exact methods, jurisdiction and management needed to satisfy the Fish and Wildlife Service's opinions on wetlands which must be replaced in the R & B project. Reclamation will make justifications on this basis.
2. Reclamation will make justifications for planned activities that meet criteria A through G under Criterion H.

CRITERION I

Leased Lands. Lands which are within an irrigation district which has contractual repayment obligation to the federal Government, and the lands were included in the original project plans as part of the revenue base of the irrigation district to meet its financial obligations.

1. Lands used for grazing and agricultural leases which generate revenues for repayment of a construction loan(s) under the authority of Subsection I of the Fact Finders Act of 1924 (43 U.S.C. 417) will be recommended for withdrawal where this was a consideration in the feasibility study, authorizing legislation, or appropriations act. These are an integral part of the project and are considered part of the contract between the irrigation district and Reclamation.

Segregation: From settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. Ch. 2), but not leasing under the mineral leasing laws.

Term: These withdrawals will be for the remaining estimated repayment period for the construction, and Rehabilitation and Betterment loans for the reservoir and primary water delivery facilities.

Jurisdiction: Reclamation to ensure these revenues are deposited according to the Reclamation laws.

2. Lands used for revenue generation for purposes other than repayment of construction loan(s), i.e., operations and maintenance, are normally inappropriate for withdrawal recommendation. The sole exceptions where Congress has authorized and appropriated funds for the construction of reclamation project which is not economically viable. In this situation, consideration shall be given to the need for a economic base to satisfy the legislative requirement as determined by a Repayment Capability Analysis prepared by Reclamation. Withdrawals used for this purpose will be terminated at the earliest possible date, without causing severe economic hardship (bankruptcy) on the irrigation district and its members. These withdrawals are an exception to normal legislative and withdrawal practice and, therefore, only exist in a handful of instances. These withdrawals must be closely scrutinized by Reclamation and BLM to ensure they are absolutely necessary.

Segregation: None. These withdrawals only transfer jurisdiction and will not have segregations when the sole purpose for the withdrawal is to ensure revenues generated are controlled by Reclamation laws and deposited in the Reclamation Fund.

Term: Needed withdrawals will be continued for as short a period of time as possible, not to exceed a maximum of 10 years. When the withdrawal is reviewed near the end of the 10 year period under the authority of FLPMA, Section 204(f), the withdrawal may be further extended based on the current Repayment Capability Analysis.

Jurisdiction: Reclamation, however, BLM will retain management of all actions, except that which is generating the revenue.

PROCEDURES FOR IMPLEMENTING I

1. There are no present repayment contracts that incorporate lease revenue.
2. Reclamation will check on potential for repayment contracts on the R & B projects mentioned above.
3. Reclamation will justify planned leased revenue land under Criterion H.



United States Department of the Interior

BUREAU OF RECLAMATION

Great Plains Region
Montana Projects Office
P.O. Box 30137
Billings, Montana 59107-0137



IN REPLY
REFER TO:

JUL 14 1992

MT-423

Memorandum

To: District Manager, Bureau of Land Management,
Lewistown District Office, Lewistown, Montana

From: Project Manager, Billings, Montana

Subject: East Milk River Withdrawal Review (Withdrawal Review)

Enclosed are Final Justification Statements for the withdrawal review of Milk River Project lands under the JVP-Resource Management Plan. Also enclosed are a summary table of revoked and retained lands and a copy of memorandum FWE-61130 from the U.S. Fish and Wildlife Service which explains the mitigation process and requirements placed on the Bureau of Reclamation.

Please contact Tim Personius at 657-6202 if you have any questions pertaining to the withdrawal review.

ACTING

Richard L. Long

Enclosures

cc: State Director
Bureau of Land Management
Attention: Dee Baxter
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Billings MT 59101